

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 STEVE COLEMAN,

Case No.: 3:17-cv-00310-MMD-WGC

4 Plaintiff

Order

5 v.

Re: ECF No. 51

6 ROBINSON, et. al.,

7 Defendants
8

9 Plaintiff has filed a Motion to Dismiss a Defendant. (ECF No. 51.) Defendants do not
10 oppose the motion. (ECF No. 54.)

11 Plaintiff moves under Federal Rule of Civil Procedure 71.1 to dismiss defendant Colter
12 Rynerson because he would not be able to prove a deliberate indifference claim against Rynerson.
13 He mentions that he seeks a dismissal of Rynerson without prejudice.

14 Rule 71.1 applies to special proceedings condemning real or personal property and is not
15 applicable to this action. Federal Rule of Civil Procedure 41(a)(2), which governs voluntarily
16 dismissal of an *action* at the request of a plaintiff. Federal Rule of Civil Procedure governs
17 amendment of pleadings. Federal Rule of Civil Procedure 21 governs misjoinder of parties. Since
18 Plaintiff does not seek to dismiss the action but only a defendant, it appears that voluntary dismissal
19 of a defendant would be appropriate under either Rule 15 or Rule 21, and not Rule 41. Under Rule
20 15(a)(2), Plaintiff may seek leave to amend a pleading. Rule 21 states: "On motion or on its own,
21 the court may at any time, on just terms, add or drop a party."

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1 The court finds that dismissal of Defendant Rynerson is appropriate under Rule 21.
2 Therefore, Plaintiff's motion (ECF No. 51) is **GRANTED** and defendant Rynerson is
3 **DISMISSED** from this action **WITHOUT PREJUDICE**.

4 **IT IS SO ORDERED.**

5 Dated: October 18, 2019.

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7 William G. Cobb
8 United States Magistrate Judge
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